Supreme Court, U.S.
FILED
JAN 2 1987
JOSEPH F. SPANIOL, JR.
CLERK

(2)

No. 86-930

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

STATE OF ILLINOIS,

Petitioner,

v.

JAMES EALY,

Respondent.

On Petition for Writ of Certiorari to the Appellate Court of Illinois, First Judicial District

RESPONDENT'S BRIEF IN OPPOSITION

ROBERT L. GRAHAM *
RANDALL E. MEHRBERG
JENNER & BLOCK
One IBM Plaza
Chicago, Illinois 60611
(312) 222-9350

Attorneys for Respondent, James Ealy

* Counsel of Record

Midwest Law Printing Co., Chicago 60611, (312) 321-0220

39 PP

TABLE OF CONTENTS

	PAGE
OPINION BELOW	1
COUNTERSTATEMENT OF QUESTIONS PRESENTED	2
COUNTERSTATEMENT OF THE CASE	3
REASONS FOR DENYING THE WRIT	9
I.	
PROCEDURAL HISTORY AND DECISION BELOW	9
II.	
THE PETITIONER'S FIRST ARGUMENT, WHICH ASSERTS THAT THE RESPONDENT WAS NOT SEIZED BY THE POLICE, DOES NOT WARRANT REVIEW BY THIS COURT	11
A. The Illinois Appellate Court's Decision, Which Simply Applied Firmly Established Precedent To The Undisputed Facts Of This Case, Does Not Raise Novel Questions Or A Conflict In The Law	11
B. The Appellate Court Correctly Concluded That The Respondent Was Illegally Arrested And That The Fruits Of His Arrest Should Be Suppressed	12
III.	
THE SECOND ISSUE RAISED IN THE PETITION, WHETHER RESPONDENT'S STATEMENT AND CONSENTS WERE VOLUNTARY, IS NOT WORTHY OF CERTIORARI	17
A. The Question Of Voluntariness Is Not Before This Court	17

B. The Factual Determination As To Whether The Respondent's Statement And Alleged Consent Were Voluntary Does Not Raise Any Special Or Important Reason For Granting Certiorari 18

C. Respondent's Statement And Consent To Search Were Involuntarily And Unlawfully Obtained, Requiring Suppression Of The Statement And The Evidence Seized In The Searches 18

1. Respondent's Statement Was Not Voluntarily Given 18

2. The Police Searched Mrs. Ealy's Apartment Without A Warrant Or Valid Consent 21

a. The police did not obtain a valid consent from Respondent 22

b. The police did not obtain a valid consent from Mrs. Ealy 24

IV.

THE PETITIONER'S THIRD ARGUMENT, THAT THE TAINT OF RESPONDENT'S ILLEGAL ARREST WAS PURGED BY ATTENUATING CIRCUMSTANCES, IS NOT WORTHY OF CERTIORARI 25

A. The Petitioner's Claim Is Not Properly Before This Court 25

B. The Petitioner's Argument, Which Is Factual In Nature, Does Not Raise Any Special Or Important Reasons For Granting Certiorari .. 25

C. No Intervening Events Attenuated The Connection Between Respondent's Illegal Arrest And His Alleged Statement And Consent To Search 26

CONCLUSION 29

TABLE OF AUTHORITIES

Cases: PAGE

Brown v. Illinois, 422 U.S. 590 (1975) ... 12, 26, 27, 28

Bumper v. North Carolina, 391 U.S. 543 (1968) .. 24

Cardinale v. Louisiana, 394 U.S. 437 (1969) 18, 25

Dunaway v. New York, 442 U.S. 200 (1979) 2, 3, 11, 12, 13, 15-17, 26-28, 29

Florida v. Royer, 460 U.S. 491 (1983) 14

Gallegos v. Colorado, 370 U.S. 49 (1962), *reh'g denied*, 370 U.S. 965 (1962) 19

Haley v. Ohio, 332 U.S. 596 (1948) 19

In re Gault, 387 U.S. 1 (1967) 19, 20

Malloy v. Hogan, 378 U.S. 1 (1964) 18

Miranda v. Arizona, 384 U.S. 436 (1966) ..... *passim*

People v. DeMorrow, 59 Ill. 2d 352, 320 N.E.2d 1 (1974) 22

People v. Devine, 17 Ill. App. 3d 1053, 309 N.E.2d 76 (4th Dist. 1974) 19

People v. Finklea, 119 Ill. App. 3d 448, 456 N.E.2d 680 (2d Dist. 1983) 13

People v. Kincaid, 87 Ill. 2d 107, 429 N.E.2d 508 (1981), *cert. denied*, 455 U.S. 1024 (1982) 19

People v. Lind, 370 Ill. 131, 18 N.E.2d 189 (1938) .. 23

People v. Moriarity, 33 Ill. 2d 399, 211 N.E.2d 704 (1965) 19

People v. Norcutt, 44 Ill. 2d 256, 255 N.E.2d 442 (1970) 19

People v. Parnell, 31 Ill. App. 3d 627, 334 N.E.2d 403 (3d Dist. 1975) 19

People v. Prude, 66 Ill. 2d 470, 363 N.E.2d 371 (1977), *cert. denied*, 434 U.S. 930 (1977) 20

People v. Reynolds, 94 Ill. 2d 160, 445 N.E.2d 766 (1983) 12

People v. Sampson, 86 Ill. App. 3d 687, 408 N.E.2d 3 (1st Dist. 1980) 12

People v. Savory, 82 Ill. App. 3d 767, 403 N.E.2d 118 (3d Dist. 1983), *appeal denied*, 81 Ill. 2d 598 (1980), *cert. denied*, 449 U.S. 1011 (1981) 19

People v. Shaver, 77 Ill. App. 3d 709, 396 N.E.2d 643 (2nd Dist. 1979) 23

People v. Simmons, 60 Ill. 2d, 173, 326 N.E.2d 383 (1975) 20

People v. Starling, 64 Ill. App. 3d 671, 381 N.E.2d 817 (5th Dist. 1978) 19

People v. Stone, 61 Ill. App. 3d 654, 378 N.E.2d 263 (5th Dist. 1978) 20

People v. Szerletich, 86 Ill. App. 3d 1121, 408 N.E.2d 1098 (4th Dist. 1980) 16

People v. Townes, 91 Ill. 2d 32, 435 N.E.2d 103 (1982), *cert. denied*, 459 U.S. 878 (1982) 11-16, 29

People v. Travis, 122 Ill. App. 3d 671, 462 N.E.2d 654 (1984) 20, 26

People v. Turner, 56 Ill. 2d 201, 306 N.E.2d 27 (1973) 19

Schneckloth v. Bustamonte, 412 U.S. 218 (1973) .. 21-23

Taylor v. Alabama, 457 U.S. 687 (1982) 27

United States v. Mendenhall, 446 U.S. 544 (1980) .. 12

Webb v. Webb, 451 U.S. 493 (1981) 25

Wilson v. Schnettler, 365 U.S. 381 (1961), *reh'g denied*, 365 U.S. 890 (1961) 12

Wong Sun v. United States, 371 U.S. 471 (1963) .. 26

Constitutional Provisions:

U.S. Constitution:
Fourth Amendment 2, 12
Fifth Amendment 18
Fourteenth Amendment 18

State of Illinois Constitution:
Art. I, § 6 12
Art. I, ¶ 10 18

Treatises:

3 W. LaFave, *Search and Seizure: A Treatise on the Fourth Amendment*, 1 8.2(b), at 656 (1978) .. 23

In The

Supreme Court of the United States

October Term, 1986

STATE OF ILLINOIS,

Petitioner,

v.

JAMES EALY,

Respondent.

On Petition for Writ of Certiorari to the Appellate Court of Illinois, First Judicial District

RESPONDENT'S BRIEF IN OPPOSITION

This brief is submitted by respondent James Ealy ("Respondent") in opposition to the Petition for a Writ of Certiorari ("Petition") filed by the State of Illinois ("Petitioner").

OPINION BELOW

The opinion of the Illinois Appellate Court, First Judicial District, is reported at 100 Ill. Dec. 221, 497 N.E.2d 101 (1st Dist. 1986), and is included as Appendix A to the State's Petition to this Court. The order of the Supreme Court of Illinois, denying the State's petition for leave to appeal, was entered on October 2, 1986. That order is included as Appendix B to the Petition.

COUNTERSTATEMENT OF QUESTIONS PRESENTED

The Petitioner purports to raise three questions for review by this Court. Two of those issues are not properly before the Court.

The second question raised by the Petitioner is whether the Respondent's statement and consents to search were voluntary. This issue was not ruled upon by the Illinois Appellate Court, and therefore is not properly before this Court.

The third question raised by the Petitioner is whether intervening circumstances removed the taint from Respondent's illegal arrest. This issue was not raised by Petitioner in the trial court, in the Illinois Appellate Court, or in the Illinois Supreme Court, and therefore is waived.

Only the first question identified in the Petition is legitimately presented to this Court: whether the Illinois Appellate Court erred in holding, unanimously, that the Respondent was illegally arrested in violation of his rights under the Fourth Amendment to the United States Constitution and this Court's decision in *Dunaway v. New York*, 442 U.S. 200 (1979).

Contending that Respondent's Fourth Amendment rights were not violated, Petitioner acknowledges that the police had no probable cause to arrest Respondent. Instead, Petitioner's argument, seeking the exercise of this Court's jurisdiction and the reversal of the decision below, is based on the contention that Respondent voluntarily cooperated with police and was not under arrest, despite the undisputed facts showing that (a) Respondent, a teenager with a tenth grade education, was taken without a warrant by police from his home in the middle of the

night; (b) Respondent was thereafter held, alone, without benefit of counsel, family or friends, for over 18 hours at police headquarters until two warrantless middle-of-the-night searches could be conducted and a statement extracted; and (c) while confined at police headquarters, Respondent was interrogated repeatedly by teams of police officers, working in shifts, who questioned Respondent at least 8 times at length in a small, windowless, locked room, during which time Respondent was deprived of food, drink and sleep, and Respondent's underwear and gym shoes, which he had been wearing, were taken away from him.

The unanimous decision of the Illinois Appellate Court finding that Respondent was illegally arrested is heavily fact specific and is consistent with the decision of this Court in *Dunaway v. New York*, 442 U.S. 200 (1979) and the decisions of the Illinois Supreme Court. It does not conflict with any decision of this Court or any State Supreme Court, and does not present any legal issue worthy of review.

COUNTERSTATEMENT OF THE CASE

The Statement of Facts in the State's Petition fails to set forth fully and fairly the facts of this case, as established in the pretrial motion to suppress evidence. Accordingly, Respondent sets forth the following additional facts.*

* Documents, exhibits and matters occurring at trial or during the transcribed hearings are cited by reference to a record page number, *e.g.*, "R. 1234."

Approximately a day and a half after the Parkers were killed, the police had no leads. Late in the day on August 17, 1982, two detectives from the Chicago Police Department, Detectives Thedford and Harrington, went to the Ealy apartment to interview James Ealy. (R. 65-66, 109, 1015.) At that time, James Ealy, one of five children of Willie Thompson and Katherine Ealy, was 17 years old. (R. 468, 1407-08.) James had progressed slowly and suffered learning problems in school. He did not complete the tenth grade. (R. 1408, 1412.) After leaving school, James was employed as a dishwasher at a restaurant in downtown Chicago. (R. 1413.)

No witness had suggested that James Ealy was connected with the deaths of the Parkers. (R. 64-65, 940.) Nor did fingerprints or any other evidence tie James to the crime. (R. 64, 955-56.) In fact, the police acknowledged that there was nothing to tie James Ealy to the Parker deaths. (R. 607, 608-09.) To the police, James was a former boyfriend of Mary Ann Parker, one of the victims.

Nothing unusual or suspicious happened when the police arrived at the Ealy apartment on August 17. The police agreed that Mrs. Ealy was cooperative. (R. 109.) She sent her youngest son, Virgil, out to find James, who was not home when the police arrived. (R. 69, 110, 1016, 1420.) Shortly thereafter, James returned to the apartment. (R. 69, 110, 1016, 1421.)

Rather than question James at home, the detectives told James and his mother that "it was necessary" for James to go with them to the police station. (R. 324, 472.) James told the police officers that he had a date that evening. (R. 609.) The police responded that they would bring him home soon. (R. 325.) Upon leaving the apartment, Detectives Thedford and Harrington began to exert pressure on James. The police placed themselves in front of and behind James as they escorted him to the police car. (R.

325, 472, 1423.) The officers then placed James in the back of their police car. (R. 473.) The car had no door or window handles on the inside and had a wire screen separating the front seat from the back seat. (R. 473.)

Detectives Thedford and Harrington drove to Area 4 Homicide and immediately placed James in a small, windowless interrogation room. (R. 473.) The interrogation room was clearly one in which James Ealy was confined and not free to leave. Indeed, the very conditions of the room were coercive and confining. It was a small room, approximately nine feet by twelve feet in size. (R. 83.) It had no windows. It had a heavy wooden door that was closed during the interrogations. (R. 83-84, 116, 213-14, 273-74, 473-74.) The door had no handle on the inside and could not be opened from within the interrogation room. (R. 84, 213-14, 473, 1172.)

The officers left James alone in the room for twenty minutes. James then banged on the door and asked to leave. (R. 485-86.) Instead, the detectives returned and interrogated James for approximately thirty minutes, questioning him about his whereabouts on August 16, 1982. (R. 39, 82; slip op. at 5.) Although James provided no incriminating information and the police had no basis to detain him, they did not release him. The police officers' refusal to release James occurred notwithstanding James' requests to leave, the fact that the police were aware that James was late for a date with his girlfriend, and the detectives' earlier promise that they would bring James home soon. By this time, James believed that he was under arrest.

Mr. Ealy testified that from the outset of his detention, he felt coerced by the police. (R. 472, 485.) The physical confines, the duration of the interrogation and the manner in which he was treated all combined to create an intimidating and coercive environment. (R. 442, 473-88.)

Indeed, James' reaction to this coercion was immediately apparent, even to the interrogating officers. The detectives admitted that, as early as 10:00 to 10:30 p.m. on August 17, James "was trembling and . . . his pulse in his temple [was] throbbing." (R. 98, 121-22, 124.) Despite these problems, the police did not offer James the opportunity to lie down, did not offer him the opportunity to see his mother or an attorney, did not offer him food or water and did not even advise him of his rights to counsel or to remain silent until he had been at the police station for over one and one-half hours. (R. 121-22, 486, 1171-75.) At no time did the police tell James that he was free to leave.

James remained in the interrogation room from the time he arrived at Area 4 Homicide on the evening of August 17 until he was formally charged with murdering the Parkers at approximately 3:00 p.m. on August 18. (R. 71, 111, 476.) James was in the interrogation room overnight for at least eighteen consecutive hours. (R. 71, 81, 111.) During that time, the police questioned James repeatedly and continuously. The police also removed his underwear and gym shoes. Slip op. at 17. James was subjected to at least eight different interrogations, all without counsel, in the same interview room. He was questioned in shifts by teams of detectives and police officers. (R. 39, 49, 82-104, 138-39, 145, 201, 202-03, 204-05, 485-86, 1174.)*

---

* The police officers' determination to coerce information from James was not limited to the interrogations. While James was still in custody, Detectives Vucko and Switski conducted two warrantless searches of Mrs. Ealy's apartment in the middle of the night. The first search occurred at 1:45 a.m. on August 18 and lasted for one-half hour. (R. 132.) The second search occurred at 6:00 a.m. (R. 143.) On both occasions, Mrs. Ealy was disturbed at home while in her night clothes and attempting to sleep. (R. 341, 348.)

There is no dispute that a search warrant was not obtained for either search. The investigating detectives admitted that they

(Footnote continued on following page)

By 9:30 a.m., James was visibly upset and crying. (R. 147, 1172-75.) It is undisputed that he still had not seen a lawyer or his mother; he had not eaten or had anything to drink; and he had little, if any, sleep. (R. 485-86, 1171-75.) Nonetheless, as the police conceded, they continued to interrogate James and tell him that his story made no sense. (R. 147, 1175.) Up until this time, James had not confessed. (R. 186.)

Finally, after being continuously interrogated throughout the night by various teams of detectives, and having been psychologically and physically coerced, James broke down, began to cry, and agreed to give the police the statement they had sought through the night. (R. 147, 1174-75.)

Not suprisingly, the product of these coercive tactics was distorted and unreliable. The "statement" James finally gave was noteworthy for its repeated inconsistencies with the undisputed testimony and physical evidence in the case. While James "confessed" that he singlehandedly strangled four members of the Parker family at 11:45 p.m. on August 15, (R. 1323-31), Willemina Rucker, a close friend and relative of Kristine Parker, testified at trial that she

---

footnote continued

made no effort whatsoever to obtain a search warrant (R. 223, 1071, 1079), despite the fact that there was ample time and opportunity to obtain one. (R. 162-63, 216.) Rather, the searches were made pursuant to Respondent's alleged "consent," which the police maintain was obtained from James while he was at the police station. According to the police, James consented to the first search four and one-half hours after he was taken from his home to the police station. (R. 98, 121-22, 124.) After conducting the first search, the detectives made some additional stops and returned to the police station at about 4:15 a.m. (R. 138, 213-14.) The detectives again interrogated James and allegedly obtained another consent to search at 5:30 a.m., eight and one-half hours after James first was picked up. (R. 142-44, 523-25, 485-86.) As set forth in greater detail on pp. 21-25, *infra*, the alleged consents were the fruits of James' illegal arrest and were not voluntarily given.

spoke with Kristine Parker at approximately 7:30-8:00 a.m. on August 16, about 8 hours after James supposedly killed Kristine. (R. 1388.) In addition, Jesse Moore, a neighbor, saw Kristine Parker walk into her apartment at 12:15 a.m. on August 16, approximately one-half hour after James was supposed to have killed her. (R. 1339-40.) Finally, Dr. Stein, Chief Medical Examiner for Cook County, testifed that the Parkers died within "a number of hours before he arrived on the scene" at 1:50 p.m. on August 16. (R. 911.) Cora Parker's death certificate, sworn to by Dr. Stein, stated that she died at 12:30 p.m. on August 16, over 12 hours after the time of death specified in James' statement. (R. 914.)

In addition, the fact that the ligature marks and method of strangulation varied among the victims also is at variance with James' statement that he killed the Parkers by himself. (R. 907-09.) This aspect of the statement is further contradicted by the fact that none of the victims were bound or gagged in any way. (R. 910.)

In the "confession", James also stated that he used items seized from his mother's apartment and repeatedly shown to him during the interrogations as murder weapons. Yet, those items did not match the items found in the Parkers' apartment. Specifically, the belt used to kill Mary Ann Parker did not match the material seized from the Ealy apartment in size or color. (R. 909, 1167-69, 1231, 1250.) Furthermore, rather than tying James to the crime, the blood, mucus, sperm, semen, fiber and visual examinations conducted by the Crime Lab showed that the remaining items seized from Mrs. Ealy's apartment had no relationship whatsoever to the Parker deaths.

Finally, James' statement indicates that he killed all four Parkers because Cora Parker teased him about having a red eye. However, there was no evidence at trial that James ever had a red eye. Nor was there any other tes-

timony that James was anywhere near the Parkers' apartment on August 15 or 16, or that James felt any hostility toward the Parkers.

After signing the written statement, James was finally permitted to see his mother. (R. 488.) When Mrs. Ealy saw James for the first time, she was accompanied by Beverly Bearden, a case worker employed by Catholic Charities. (R. 430.) Ms. Bearden came to the police station at Mrs. Ealy's request. (R. 359, 435.) Upon her arrival, she asked to see James, but was told "not yet." (R. 437-38.)

Mrs. Ealy and Ms. Bearden first saw James at approximately 3:00 p.m. on August 18. (R. 438.) Upon entering the interrogation room, they observed that James "was trembling" and "was terribly upset, he was crying." (R. 392, 440.) James immediately told his mother and Ms. Bearden that the police had pressured him very hard and told him that he would never see his mother again unless he confessed. (R. 442.)

REASONS FOR DENYING THE WRIT

I.

PROCEDURAL HISTORY AND DECISION BELOW.

The Respondent was convicted of four counts of murder on February 3, 1984. On March 2, 1984, the trial court denied the Respondent's post-trial motion, entered judgment, and sentenced the Respondent to a term of natural life in prison. On March 9, 1984, the Respondent filed his Notice of Appeal in the Illinois Appellate Court.

In a unanimous decision, the Illinois Appellate Court reversed Respondent's convictions and remanded for a

new trial. In particular, the Illinois Appellate Court held that Respondent was arrested without probable cause in violation of his fundamental constitutional rights:

> Under the totality of the circumstances, we conclude that the defendant's detention . . . resembled a traditional arrest and indicates that a reasonable, innocent person in defendant's position would not have believed he was free to leave.

Slip op. at 17. The Appellate Court went on to state that "the unconstitutional misconduct of the police was a purposeful expedition for evidence in the hope of obtaining sufficient information upon which to predicate the probable cause necessary for defendant's arrest." Slip op. at 17.

Because the Appellate Court reversed the convictions based upon a determination that the Respondent was illegally arrested, it did not reach the merits of the Respondent's other contentions raised on appeal.* However, the Court did conclude "that a number of the State's remarks (in closing argument) were grossly improper, prejudicial, inflammatory and designed to arouse the passions of the jury against defendant. These remarks could not possibly

---

* In addition to arguing that the fruits of his illegal arrest should be suppressed, the Respondent challenged the use at trial of his statement and the items seized from his mother's apartment on the independent ground that the statement and consent to search were involuntary and unlawfully obtained. The Respondent also argued that his rights to due process and pre-trial discovery were violated by the State's failure to produce crucial and exculpatory microanalyst studies, reports, comparisons and photographs in advance of the suppression hearing and trial. Finally, Respondent contended that the trial court erred by denying his motions for a mistrial and his post-trial motion, where the State's closing argument included a comparison of Respondent to the notorious mass-murderer Richard Speck, accused defense counsel of lying, repeatedly commented on Respondent's decision not to testify, and contained inflammatory statements of the prosecutor's personal beliefs about Respondent's guilt.

aid the jury in weighing or evaluating the evidence." Slip op. at 18-19. The Court admonished the State not to repeat those or similar comments at retrial. The State did not file a petition for rehearing in the Appellate Court.

Following the Illinois Appellate Court's decision, the State filed a petition for leave to appeal in the Illinois Supreme Court. The Illinois Supreme Court denied the State's petition for leave to appeal, without dissent. Thereafter, the State filed the instant Petition.

II.

THE PETITIONER'S FIRST ARGUMENT, WHICH ASSERTS THAT THE RESPONDENT WAS NOT SEIZED BY THE POLICE, DOES NOT WARRANT REVIEW BY THIS COURT.

A. The Illinois Appellate Court's Decision, Which Simply Applied Firmly Established Precedent To The Undisputed Facts Of This Case, Does Not Raise Novel Questions Or A Conflict In The Law.

In its decision in this case, the Illinois Appellate Court simply applied the established precedent set forth in this Court's decision in *Dunaway v. New York*, 442 U.S. 200 (1979) and the Illinois Supreme Court's decision in *People v. Townes*, 91 Ill. 2d 32, 435 N.E.2d 103 (1982), *cert. denied*, 459 U.S. 878 (1982), to the undisputed and unique facts of this case. Contrary to the Petitioner's argument, the Appellate Court did not rule that "the police may not question a person at the police station when he consents to come to the station for questioning." Petition at i. Rather, the court held that "[u]nder the totality of the circumstances, we conclude that defendant's detention, like that of the defendant in *Townes*, resembled a traditional arrest and indicates that a reasonable, innocent person in defendant's position would not have believed that he was free to leave." Slip op. at 17.

As the Illinois Supreme Court recognized by denying the State's Petition For Leave To Appeal, the Appellate Court's fact specific decision does not present special or important reasons for review. The decision is consistent with this Court's decision in *Dunaway* and its progeny, and does not raise novel questions of law. Nor does it conflict with decisions of other federal courts or Illinois courts. Thus, the Petition should be denied.

B. The Appellate Court Correctly Concluded That The Respondent Was Illegally Arrested And That The Fruits Of His Arrest Should Be Suppressed.

In addition to the reasons set forth above, this case does not warrant further review because the Illinois Appellate Court's decision correctly applied clear precedent to the facts of this case. It is well established in American jurisprudence that the Fourth Amendment to the United States Constitution requires that the police have probable cause to believe that an individual has committed a particular criminal offense before he can be arrested. *Dunaway v. New York*, 442 U.S. 200, 216 (1979); *Wilson v. Schnettler*, 365 U.S. 381, 383 (1961), *reh'g denied*, 365 U.S. 890 (1961); *People v. Townes*, 91 Ill. 2d 32, 435 N.E.2d 103 (1982), *cert. denied*, 459 U.S. 878 (1982). The Constitution of the State of Illinois also interposes a probable cause requirement. *See* Art. I, § 6.

An arrest occurs when the police detain a person in a manner such that a reasonable, innocent person in the same situation would not consider himself free to go. *United States v. Mendenhall*, 446 U.S. 544, 554-55 (1980); *People v. Reynolds*, 94 Ill. 2d 160, 445 N.E.2d 766 (1983). If the arrest is not supported by probable cause, all evidence directly traceable to the unlawful detention must be suppressed. *Brown v. Illinois*, 422 U.S. 590 (1975); *People v. Sampson*, 86 Ill. App. 3d 687, 693-96, 408 N.E.2d 3, 9-10 (1st Dist. 1980).

To determine whether a reasonable, innocent person would consider himself in custody, courts review the material circumstances surrounding that custody. Among the factors considered are:

> . . . the location, time, length, mood and mode of the interrogation; the number of police officers present and the presence or absence of friends or family of the accused; any *indicia* of formal arrest; the manner in which the person questioned got to the place of interrogation, *i.e.*, voluntarily on his own, in response to a police request, or on a verbal command indicating compulsion; whether he voluntarily assists police in their interrogation; whether the subject is allowed to walk within and from the location of the interrogation unaccompanied by police; and the age, intelligence, and mental makeup of the accused.

People v. Finklea, 119 Ill. App. 3d 448, 452, 456 N.E.2d 680 (2d Dist. 1983). Another important factor is whether the police tell the person that he is free to leave. *Dunaway v. New York*, 442 U.S. 200 (1979); *People v. Townes*, 91 Ill. 2d 32, 435 N.E.2d 103 (1982), *cert. denied*, 459 U.S. 878 (1982). The underlying theme in all of these factors is whether the police conduct, when viewed objectively, would suggest to a reasonable person that he was not free to refuse to cooperate with the police.

The rule against illegal seizures was clearly established by this Court in *Dunaway v. New York*, 442 U.S. 200 (1979). In *Dunaway*, the police took the petitioner into custody without probable cause and transported him by police car to a police station. Petitioner was not told he was under arrest, although the police later testified that they would have used force to bring him in. At the station, the police placed petitioner in an interrogation room, gave him *Miranda* warnings, and questioned him. 442 U.S. at 203. This Court held that this constituted an illegal seizure. 442 U.S. at 216.

This Court found that the petitioner's detention was similar to a traditional arrest because he was not questioned briefly where he was found, but instead was taken by police car to a police station and placed in an interrogation room. Moreover, the police never informed him he was free to leave. 442 U.S. at 212. This Court held that the Fourth Amendment clearly applied to these facts, whether or not they were termed an "arrest" under state law. 442 U.S. at 212. *See also Florida v. Royer*, 460 U.S. 491 (1983).

The Appellate Court's decision in the instant case is also consistent with settled Illinois law. Indeed, the Appellate Court's decision in this case relied heavily on the Illinois Supreme Court's decision in *People v. Townes*, 91 Ill. 2d 32, 435 N.E.2d 103 (1982), *cert. denied*, 459 U.S. 878 (1982). In *Townes*, the police requested the defendant to accompany them to the police station. When the defendant asked why, the police told him they were investigating a home invasion and assault. The police gave the defendant a choice of either going to the station in a police car or driving his own car. He chose to ride with the police.

Upon arriving at the station, the police took the defendant to an interview room and read him his *Miranda* warnings. The police then questioned the defendant on five separate occasions over the next twelve hours until he gave a statement. During this twelve-hour period, the police obtained the defendant's consent to search his apartment and subsequently confronted him with the fruits of that search. The defendant was never told he was free to leave or that he was not under arrest. 91 Ill. 2d at 37.

The Illinois Supreme Court held in *Townes* that the police illegally seized the defendant when they asked him to accompany them to the station on less than probable cause. 91 Ill. 2d at 37. In reaching its decision, the Illi-

nois Supreme Court stressed that the defendant was not questioned at his home, but rather was immediately taken to the station; his home was searched and he was confronted with the fruits of that search; he was repeatedly read his *Miranda* warnings; and he was never told he was free to go. The Court held that, under these circumstances, a reasonable person would not have believed he was free to leave. 91 Ill. 2d at 37.

The similarity between *Dunaway*, *Townes* and the present case is striking. The police did not question the Respondent at home. Rather, they told him that they were investigating the Parker murders and represented that "it was necessary" that he speak with them at the station. (R. 324, 472.) The police took James by squad car to the station and placed him in a small interrogation room. (R. 473.) After interrogating him, the police did not take James home, as they had earlier promised (R. 325), notwithstanding the State's admission that the police did not have probable cause to detain James. Rather, the police continued the illegal detention, magnifying its effects with every passing hour.

In an expedition for evidence, James was questioned on eight separate occasions over at least an 18-hour period. (R. 71, 81, 111.) During this period, the police twice searched his mother's home and subsequently confronted him with the fruits of those searches. (R. 142-44, 145.) The police, who acknowledged that they were aware that James had scheduled a date for that evening (R. 609), never told him he was free to leave or that he was not under arrest; indeed, James testified that his repeated requests to leave were denied. (R. 485-86.)* Moreover, James never saw an

* Defense counsel attempted repeatedly at the suppression hearing to ask Detectives Thedford and Harrington whether they

(Footnote continued on following page)

attorney, family member or friend, and never left the interrogation room. As the Appellate Court noted, James had little if any sleep, had his underwear and gym shoes (which he had been wearing) taken from him, and was provided with no food or water during the 18-hour interrogation. Slip op. at 16-17.

Applying *Dunaway* and *Townes*, the Appellate Court concluded that James Ealy was illegally arrested. As the Illinois Supreme Court concluded in *People v. Townes*, 91 Ill. 2d 32, 37, 435 N.E.2d 103, *cert. denied*, 459 U.S. 878 (1982), "a reasonable person would not have believed he was free to leave" the police station under the circumstances of this case.*

In its Petition to this Court, the Petitioner concedes that the police did not have probable cause to arrest the Respondent.** Because the Appellate Court concluded

---

footnote continued
would have prevented James from leaving at the time they took him to Area 4 or during the interrogations. (R. 70, 74, 75, 80, 113, 114, 116, 122-24, 172.) The State's uniform objections to defense counsel's questions were consistently sustained by the trial court. The trial court's refusal to allow this testimony constituted reversible error. *People v. Szerletich*, 86 Ill. App. 3d 1121, 408 N.E.2d 1098 (4th Dist. 1980).

* Even the police officers thought James Ealy was under arrest. The police reports show that the police considered James Ealy to be under arrest at 2:15 a.m. on August 18, 1982 (R. 1687.), notwithstanding the Petitioner's repeated admissions that probable cause did not exist at that time. See, *e.g.*, State's App. Br. at 24-26.

** At trial, the State argued that the Respondent was free to leave the police station until 9:30 a.m. on August 18, 1982, approximately twelve hours after the police first detained Mr. Ealy. (R. 608-09.) In its brief to the Appellate Court, the State changed gears and argued that probable cause arose at 4:00 a.m. on August 18, 1982. (State's App. Br. at 24-26.) In its Petition to this Court, the State does not argue that probable cause ever arose. Thus, the Petitioner's entire argument rests on its assertion that the Respondent voluntarily cooperated with the police.

that in this case, a reasonable person would not have believed he was free to leave the police station, it was required to order the suppression of Respondent's statement and the items seized from his mother's apartment. In so ruling, the Appellate Court simply applied the undisputed facts to the well-established case law in Illinois. It did not reverse any of the trial court's factual findings, but merely recognized that the trial court had misapplied the law to those facts. The decision of the Appellate Court is correct and does not warrant review by this Court.

III.

THE SECOND ISSUE RAISED IN THE PETITION, WHETHER RESPONDENT'S STATEMENT AND CONSENTS WERE VOLUNTARY, IS NOT WORTHY OF CERTIORARI.

A. The Question Of Voluntariness Is Not Before This Court.

Absent intervening events to break the connection between an illegal arrest and the evidence obtained therefrom, it makes no difference if Respondent's decision to supply evidence was "voluntary" for Fifth Amendment purposes. *Dunaway v. New York*, 442 U.S. 200, 217-18 (1979). In its appeal to the Illinois Appellate Court, the State did not argue that there were intervening events to break the connection between James Ealy's illegal arrest and the evidence obtained therefrom.* Thus, the Illinois Appellate Court did not find it necessary to rule on the Respondent's argument that his statement and consent to search were involuntarily and unlawfully obtained.

---

* In addition, the State failed to make this argument at trial or before the Illinois Supreme Court.

Because the Illinois Appellate Court did not decide whether the Respondent's alleged statement and consents were involuntary, that question is not properly before this Court. *Cardinale v. Louisiana*, 394 U.S. 437, 438 (1969). Moreover, the fact specific question of voluntariness does not present the type of issue for review by this Court which is contemplated by Supreme Court Rule 17.

B. The Factual Determination As To Whether The Respondent's Statement And Alleged Consent Were Voluntary Does Not Raise Any Special Or Important Reason For Granting Certiorari.

The question of whether a statement and consent to search were voluntarily given is fact specific. As demonstrated below, the parameters for such decisions are well defined in numerous opinions of this Court and the Illinois courts. The application of that firmly-established law to the unique and undisputed facts of this case does not raise novel questions of law or a conflict with other decisions of this Court, other federal courts or Illinois courts. Nor does it raise special or important reasons for review. As such, even if the issue of voluntariness had been decided by the Illinois Appellate Court, it would not warrant review by this Court. The Petition should be denied.

C. Respondent's Statement And Consent To Search Were Involuntarily And Unlawfully Obtained, Requiring Suppression Of The Statement And The Evidence Seized In The Searches.

1. Respondent's Statement Was Not Voluntarily Given.

The Constitution's guarantees against self-incrimination are well known. *See*, U.S. Const. Amend. V, XIV; *Malloy v. Hogan*, 378 U.S. 1, 8 (1964). The Illinois Constitution similarly safeguards a defendant's right not to testify against himself. Ill. Const. Art. I, ¶ 10. The privilege

against self-incrimination is necessary to limit the intrusion of the state into personal matters and to protect the truth-seeking function of criminal trials. *In re Gault*, 387 U.S. 1, 47 (1967); *Miranda v. Arizona*, 384 U.S. 436, 460 (1966).

The importance of the privilege against self-incrimination has caused courts to scrutinize carefully any asserted waiver of the privilege. As this Court and the Illinois Supreme Court have repeatedly noted, the State bears the heavy burden of proving that the accused knowingly and voluntarily waived his rights. *Miranda v. Arizona*, 384 U.S. at 475; *People v. Kincaid*, 87 Ill. 2d 107, 429 N.E.2d 508 (1981), *cert. denied*, 455 U.S. 1024 (1982). Thus, confessions are strictly examined, subject to the "test of whether the constitutionally-required warning was given and, if given, whether the rights set out by that warning were knowingly, intelligently, and voluntarily waived." *People v. Parnell*, 31 Ill. App. 3d 627, 630, 334 N.E.2d 403, 406 (3d Dist. 1975).

Among the factors considered to determine if the waiver is knowing, intelligent and voluntary are: whether the defendant was detained illegally, *People v. Moriarity*, 33 Ill. 2d 399, 402, 211 N.E.2d 704, 706 (1965); whether counsel was present at the time of the confession, *In re Gault*, 387 U.S. 1, 55 (1966); *Gallegos v. Colorado*, 370 U.S. 49 (1962), *reh'g denied*, 370 U.S. 965 (1962); *People v. Norcutt*, 44 Ill. 2d 256, 255 N.E.2d 442, 444 (1970); whether family members were present, *Haley v. Ohio*, 332 U.S. 596, 601 (1948); the defendant's level of intelligence, *People v. Devine*, 17 Ill. App. 3d 1053, 309 N.E.2d 76, 79 (4th Dist. 1974); *People v. Turner*, 56 Ill. 2d 201, 306 N.E.2d 27, 30 (1973); and the length and circumstances of the interrogation, *People v. Savory*, 82 Ill. App. 3d 767, 403 N.E.2d 118 (3d Dist. 1983), *appeal denied*, 81 Ill. 2d 598 (1980), *cert. denied*, 449 U.S. 1011 (1981); *People v. Star-*

ling, 64 Ill. App. 3d 671, 381 N.E.2d 817 (5th Dist. 1978); *People v. Stone*, 61 Ill. App. 3d 654, 378 N.E.2d 263 (5th Dist. 1978).

In addition, when, as here, a juvenile is involved, "the greatest care must be taken to assure that the admission was voluntary, in the sense not only that it was not coerced or suggested, but also that it was not the product of ignorance of rights or of adolescent fantasy, fright or despair." *People v. Simmons*, 60 Ill. 2d 173, 180, 326 N.E.2d 383 (1975), *quoting In re Gault*, 387 U.S. 1, 55 (1967). Hence, the instant record, where a juvenile is involved, requires special scrutiny, since juveniles can be "easy victim[s] of the law." *People v. Travis*, 122 Ill. App. 3d 671, 462 N.E.2d 654 (1984), *quoting Haley v. Ohio*, 332 U.S. 596, 599 (1948); *accord People v. Prude*, 66 Ill. 2d 470, 363 N.E.2d 371 (1977), *cert. denied*, 434 U.S. 930 (1977); *People v. Simmons*, 60 Ill. 2d at 181.

In the present case, after considering "both the characteristics of the accused and the details of the interrogation", it cannot be said that James Ealy knowingly, intelligently, and voluntarily confessed on August 18, 1982. *People v. Simmons*, 60 Ill. 2d at 179. As discussed in the Counterstatement of the case on pp. 3-9, *supra*, and in Section II, pp. 12-17, *supra*, the facts of this case clearly establish that James Ealy's statement was anything but voluntary.

Indeed, throughout the interrogation, James was emotionally distraught. Detective Harrington testified that after being in custody for only 1½ hours and being questioned once by the police, James was trembling and the pulse in his temple was throbbing. (R. 98, 121-22, 124.) Yet, the police did not tell James that he could go home, did not offer him food or drink, did not allow him to lie down, and did not offer to obtain medical aid. (R. 121-22, 486, 1172-75.)

Detective Vucko also testified that at 9:30 a.m. on August 18, 1982, after being held incommunicado for over 12 hours, James broke down and was crying as a result of police questioning. (R. 147, 1174.) Beverly Bearden, a caseworker from Catholic Charities who saw James immediately after his transcribed confession, testified that at 3:00 p.m. on August 18, 1982, James was "terribly upset" and "crying." (R. 440.) Moreover, James testified that he confessed only because the police threatened and intimidated him. (R. 442.) Under these circumstances, the confession was not voluntary.

In addition to the coercive conditions surrounding the statement, the statement itself demonstrates that it was not voluntarily given. The statement that was finally extracted, after over 18 hours of interrogation and rehearsal, contradicts the uncontested facts of this case. See *supra* at pp. 7-9.

An analysis of these factors and the totality of the circumstances in this case demonstrate that James Ealy did not knowingly, intelligently and voluntarily waive the privilege against self-incrimination. His statement was the product of coercive, repeated questioning of a teenage boy by shifts of police determined to extract responses which suited them. Furthermore, the statement is replete with purported statements of fact, believed to be accurate by the police at the time of the statement, but now acknowledged to be inaccurate in light of subsequent investigation.

2. The Police Searched Mrs. Ealy's Apartment Without A Warrant Or Valid Consent.

In *Schneckloth v. Bustamonte*, 412 U.S. 218, 219 (1973), this Court recognized that:

> It is well settled under the Fourth and Fourteenth Amendments that a search conducted without a warrant issued upon probable cause is "*per se* unreasonable . . . subject only to a few specifically established and well delineated exceptions." [Citations omitted.] It is equally well settled that one of the specifically established exceptions to the requirements of both a warrant and probable cause is a search conducted pursuant to consent. [Citations omitted.]

In the present case, it is undisputed that the police did not have, and made no effort to obtain, a warrant to search Katherine Ealy's apartment at 1:45 a.m. or at 6:00 a.m. on August 18, 1982. (R. 223, 1071, 1079.) The Petitioner instead maintained that the police legally searched the apartment pursuant to consent given by James Ealy and Katherine Ealy. This assertion not only is contradicted by the facts in this case, but also is without legal basis.

a. The police did not obtain a valid consent from Respondent.

In addressing warrantless searches based on consent, this Court in *Schneckloth v. Bustamonte* ruled that the State must demonstrate that the consent was voluntarily given, and not the result of duress or coercion, express or implied. 412 U.S. at 248-49. *Accord, People v. DeMorrow*, 59 Ill. 2d 352, 320 N.E.2d 1 (1974). The question of whether a consent is "voluntary" is a question of fact to be determined from the totality of the circumstances. 421 U.S. at 248-49. *Accord, People v. DeMorrow*, 59 Ill. 2d at 361. This Court went on to state that the definition of voluntariness "has always taken into account evidence of minimal schooling, low intelligence, and the lack of any effective warnings to a person of his rights." 421 U.S. at 248.

In *Schneckloth v. Bustamonte*, this Court also stressed that the place where consent is given is relevant. After reiterating its view in *Miranda* that the nature of custodial surroundings produces an inherently coercive situation, this Court commented that, "since consent searches will normally occur on a person's own familiar territory, the specter of incommunicado police interrogation in some remote station is inapposite." 412 U.S. at 247.

An individual's mental or emotional state also is relevant to determining whether consent is voluntarily given. *See* 3 W. LaFave, *Search and Seizure: A Treatise on the Fourth Amendment* 1 8.2(b), at 656 (1978). Thus, in *People v. Lind*, 370 Ill. 131, 18 N.E.2d 189 (1938), the Illinois Supreme Court held the defendant's wife's consent was invalid because she was in a "highly nervous state" when she gave it. *See also People v. Shaver*, 77 Ill. App. 3d 709, 396 N.E.2d 643 (2nd Dist. 1979), where the Illinois Appellate Court invalidated defendant's consent to be photographed due to the coercive manner in which it was obtained.

The present case raises precisely the "specter" alluded to by this Court in *Schneckloth*. The Respondent did not consent to the search while on familiar territory, but rather supposedly did so while being held incommunicado at a remote police station. As discussed *supra*, at pp. 5-7, 15-16, and 18-21, the circumstances surrounding James' confinement at the police station were extremely coercive. Consequently, as Detective Harrington acknowledged, James was trembling and the pulse in his temple was throbbing shortly before he allegedly consented to the first search. (R. 98, 121-22, 124.) James gave his second alleged consent at approximately 5:30 a.m., after having been held incommunicado, without sleep, food, or drink, without the benefit of an attorney, (R. 485-86), and after having been confronted with the fruits of the first illegal search. (R. 142-44, 523-25.)

Moreover, the first consent form was defective on its face. James could not validly consent to it because it was unintelligible. The form, admittedly filled out by the police for Mrs. Ealy's signature, but signed by James Ealy, states on its face that James is the "Lessee" of an apartment which he shares with "*James Ealy son.*" (R. 168, 217, 1070; A. 52.) All of those representations are inaccurate: Mrs. Ealy is the Lessee, not James; and James is obviously not his own "son." Furthermore, James, a 17-year-old high school dropout, clearly is not "aware of the legal requirements of a search warrant," despite the boilerplate language on the consent form. Under these circumstances, James Ealy was incapable of providing a knowing and voluntary consent.

b. The police did not obtain a valid consent from Mrs. Ealy.

Katherine Ealy flatly denied ever giving the police permission to search her apartment. (R. 343.) Rather, when the police asked her permission to search, she demanded that they obtain a search warrant. (R. 343-45.) It is undisputed that she never signed a consent to search form. (R. 1072-73.)

However, even assuming *arguendo* that Mrs. Ealy did cooperate, her acquiescence did not constitute a valid consent. In *Bumper v. North Carolina*, 391 U.S. 543 (1968), this Court firmly held that mere acquiescence to a claim of lawful authority is not a valid consent. 391 U.S. at 549. As this Court stated, "when a law enforcement officer claims authority to search a home under a warrant, he announces in effect the occupant has no right to resist the search. The situation is instinct with coercion—albeit colorably lawful coercion. Where there is coercion there cannot be consent." 391 U.S. at 550.

The situation is no different here where police presented Mrs. Ealy with a purportedly lawful consent to search form and announced—not "may we search"—but "we [are] here to recover other items from beneath [James'] bed." Thus, under the circumstances, Katherine Ealy could not have provided a valid consent to search her apartment. Consequently, the Petition should be denied.

IV.

THE PETITIONER'S THIRD ARGUMENT, THAT THE TAINT OF RESPONDENT'S ILLEGAL ARREST WAS PURGED BY ATTENUATING CIRCUMSTANCES, IS NOT WORTHY OF CERTIORARI.

A. The Petitioner's Claim Is Not Properly Before This Court.

For the first time, the State now argues in its Petition that "intervening events purged the primary taint of the illegal detention." (Petition at 32.) This argument should not be countenanced, however, because the State never raised it below. As this Court has repeatedly held, issues not raised in the courts below cannot be raised in this Court. *Webb v. Webb*, 451 U.S. 493, 499 (1981); *Cardinale v. Louisiana*, 394 U.S. 437, 439 (1969). Thus, the Petition should be denied.

B. The Petitioner's Argument, Which Is Factual In Nature, Does Not Raise Any Special Or Important Reasons For Granting Certiorari.

Like the other issues raised in the Petition, the factual determination of whether intervening circumstances existed in this case is not worthy of certiorari, especially when raised here for the first time. In view of the total absence of conflict in the law or the creation of new law, the Petitioner's previously ignored argument does not belong on the Supreme Court docket.

C. No Intervening Events Attenuated The Connection Between Respondent's Illegal Arrest And His Alleged Statement And Consent To Search.

The Petitioner's belated argument that the connection between Respondent's statement and illegal arrest were attenuated by the giving of *Miranda* warnings and two middle-of-the-night searches of his mother's apartment, which were themselves the fruits of Respondent's illegal arrest, also should be rejected as meritless by this Court. Perhaps the Petitioner recognized this previously when it chose not to raise the issue in the Illinois Appellate Court or the Illinois Supreme Court. Certainly the Illinois Appellate Court recognized the argument was without merit, notwithstanding the Petitioner's failure even to argue the matter, stating:

> We recognize, although the State does not so argue, that the illegality of an arrest does not *per se* render incriminating evidence inadmissible were the intervening events to break the connection between a defendant's illegal detention and the evidence obtained as a result therefrom. *People v. Travis*, (1984), 122 Ill. App.3d 671, 676, 462 N.E.2d 654.) Under the facts and circumstances of the instant case, clearly no intervening events occurred. Accordingly, defendant's confession and the evidence obtained as a result of the two searches required suppression since the taint of the illegal arrest was not dissipated.

Slip op. at 18.

The Petitioner concedes that this Court's holding in *Wong Sun v. United States*, 371 U.S. 471 (1963), requires that, in order for the taint of an illegal arrest to be broken, subsequent statements not only must meet the Fifth Amendment standard of voluntariness, but also must be made of sufficient free will so as to purge the taint. In *Brown v. Illinois*, 422 U.S. 590, 602 (1975), and *Dunaway v. New York*, 442 U.S. 200, 217 (1979), this Court

held that where police arrested and transported a suspect to police headquarters without probable cause, the confession obtained through custodial investigation was not admissible at trial, even though the defendant had received *Miranda* warnings. Those cases "firmly established that the fact that a confession may be 'voluntary' for purposes of the Fifth Amendment, in the sense that *Miranda* warnings were given and understood, is not by itself sufficient to purge the taint of the illegal arrest." *Taylor v. Alabama*, 457 U.S. 687, 690 (1982).

Further, in *Taylor*, this Court found that a visit from a suspect's girlfriend and companion, in addition to *Miranda* warnings, were not the kind of intervening events sufficient to break the connection between the illegal arrest and the confession. This Court also ruled that an arrest warrant based on fingerprints, which were themselves the fruit of the illegal arrest, failed to constitute sufficient attenuation.

In the instant case, the Petitioner points to no intervening circumstances other than the recitation of *Miranda* warnings and two middle-of-the-night searches of Respondent's mother's apartment. Petition at 34. Both examples are specious. The searches and the alleged evidence they produced only served to exert further pressure, surprise and confusion upon the Respondent. They were not the type of events this Court contemplated in *Brown*, *Dunaway*, and *Taylor*. In addition, the Petitioner's assertion that the searches were intervening events ignores the illegality of the searches themselves, as well as this Court's holding in *Taylor*. Moreover, the searches were the fruits of the Respondent's illegal arrest. Accordingly, they cannot be used to justify the continued detention and interrogation of the Respondent, which resulted in a coerced statement. *Taylor v. Alabama*, *supra*, 457 U.S. at 692-93.

Similarly, as stated above, the recitation of *Miranda* warnings is not an intervening event. Pursuant to the clear precedent of this Court, such warnings alone do not purge the taint of the Respondent's illegal arrest. *Dunaway* at 217; *Brown* at 602-03. Furthermore, in this case, the Respondent did not even receive *Miranda* warnings during the first interrogation. Rather, he was advised of his *Miranda* rights during his second interrogation, several hours after he was first picked up by the police. (R. 121-22, 486, 1171-75.)

Unable to point to the necessary intervening circumstances, the Petitioner also argues that the illegal arrest in this case was not sufficiently flagrant to require reversal. This assertion is absurd in light of the police's expedition for evidence in this case, which included at least 8 lengthy interrogations of a 17-year-old boy of limited intelligence, in the absence of counsel, friends or family, over an 18-hour period in a small, windowless, locked room, without food, water or sleep. As in *Dunaway v. New York*, Respondent was seized without probable cause "in the hope that something might turn up." 422 U.S. at 218. It is hard to imagine a more flagrant expedition for evidence designed to obtain a statement through surprise, fright and confusion.

The Petitioner also argues that the taint of Respondent's illegal arrest is attenuated because his statement was not obtained until more than 12 hours after he was first illegally arrested. This argument is without merit here, because the repeated interrogations of Respondent throughout the night, while in police custody and unrepresented by counsel, served only to exacerbate Respondent's fright and confusion. Indeed, the Petitioner seems to admit this when it quotes *Dunaway v. New York* for the proposition that "a prolonged detention may well be a

more serious exploitation of an illegal arrest than a short one." 422 U.S. at 220 (Stevens, J., concurring). Petition at 36.

Because the Respondent's arrest clearly was illegal, and because there were no intervening events prior to his alleged consent to search and statement, it is disingenuous for the State to argue that the statement and consents were a product of the Respondent's "reflection and free will." Petition at 37. The Illinois Appellate Court was correct in finding that "clearly no intervening events occurred" after the Respondent's illegal arrest. The Illinois Supreme Court chose not to disturb that decision. The Respondent respectfully submits that the Petitioner has not provided this Court with any reason to review the Illinois Appellate Court's well-reasoned decision.

CONCLUSION

In sum, the Petitioner's arguments to this Court are based on the resurrection of one argument that properly was rejected by the Illinois Appellate Court and Illinois Supreme Court under the firmly-established precedent of this Court, and upon two other arguments which were either never presented or never ruled upon in the state courts below, and which are equally without merit.

This case is very fact specific, and does not raise novel questions of law. The Illinois Appellate Court's decision is fully consistent with this Court's decision in *Dunaway v. New York* and the Illinois Supreme Court's decision in *People v. Townes*. As such, none of the reasons for

review suggested by the State warrant the expenditure of this Court's resources.

Respectfully submitted,

ROBERT L. GRAHAM *
RANDALL E. MEHRBERG
JENNER & BLOCK
One IBM Plaza
Chicago, Illinois 60611
(312) 222-9350

Attorneys for Respondent,
James Ealy

* Counsel of Record

December 31, 1986